

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT HANKE,

Plaintiff-Appellant,

v

LARRY R. WEBB and FARM BUREAU
INSURANCE,

Defendants-Appellees.

UNPUBLISHED

May 25, 2001

No. 221664

Lapeer Circuit Court

LC No. 98-025832-CK

Before: Jansen, P.J., and Zahra and Owens, P.J.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased a mobile home and some surrounding land for \$65,000, and was referred to defendants to obtain homeowner's insurance. Plaintiff informed defendants that he wished to obtain the best coverage available for the home. The parties disagree as to whether defendants advised plaintiff that due to the age of the home, it could be insured only for its actual cash value. Plaintiff signed an application for insurance in the amount of the actual cash value of the home, calculated by defendants to be \$42,000. Shortly thereafter, plaintiff's home was destroyed by fire. Defendants offered to pay benefits in the amount of \$42,000.

Plaintiff filed suit, alleging that defendants negligently failed to procure adequate insurance coverage for the home, including replacement coverage, and misrepresented that the home would be insured on a true actual cost basis and/or a replacement cost basis. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff received the insurance for which he applied. The trial court agreed with defendants and granted the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The relationship between an insurer and an insured is contractual in nature. Generally, an agent of an insurer has no duty to advise an insured regarding the adequacy of insurance coverage

provided. Such a duty arises when: (1) the agent misrepresents the nature or extent of the coverage offered or provided; (2) an ambiguous request is made which requires a clarification; (3) an inquiry is made which might require advice and the agent gives inaccurate advice; or (4) the agent assumes a duty through express agreement or via a promise to the insured. *Harts v Farmers Ins Exchange*, 461 Mich 1, 10-11; 597 NW2d 47 (1999). An insured is held to knowledge of the terms and conditions of an insurance policy, even though the insured may not have read the policy. *Marlo Beauty Supply, Inc v Farmers Ins Group*, 227 Mich App 309, 324; 575 NW2d 324 (1998).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. The application signed by plaintiff clearly indicates that plaintiff applied for insurance in the amount of the actual cash value of the home as calculated by defendants. Plaintiff is held to knowledge of the type of insurance for which he applied. *Id.* Plaintiff could have no reasonable expectation that he had obtained insurance other than for the actual cash value of the home. See *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 569; 596 NW2d 915 (1999). Defendants did not fail to procure the type of insurance requested by plaintiff, and did not engage in misrepresentation regarding the type of insurance for which plaintiff applied. The trial court correctly found that no special relationship existed between plaintiff and defendants. *Harts, supra*. Any error by defendants in the calculation of the actual cash value of the home goes to the issue of damages rather than to the existence of any material fact regarding negligence or misrepresentation. The trial court correctly granted defendants' motion for summary disposition.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens